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Supreme Court Rules in Favor of Free-Riders: Union Drop-Outs Don't Have to Pay Fair Share Fees, Not Entitled to Non-Core Union Benefits

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Today, the Supreme Court ruled that unions cannot collect fair share fees from employees who do not opt in to union membership. While the decision means some unions will face a significant in drop in revenue, public safety unions are not expected to be as heavily affected. This court decision was widely expected given the makeup of the Supreme Court and some recent cases. California recently passed laws giving unions opportunities to reduce the impacts of the decision.

The case is about agency shop agreements. In an agency shop, employees can chose to be full members of the union or decline union membership. But non-members still have to pay part of the cost of supporting the union. In some labor unions, non-members make up a big percentage of the employees covered by a contract. In most public safety unions, non-members are already a very small share. However, all unions should redouble efforts to provide high value to members and communicate with members about the benefits of union membership.

In ***Janus v. AFSCME***, Mark Janus argued that his $45 monthly fee to the American Federation of State, County, and Municipal Employees ("AFSCME") was unconstitutional and infringed on his first amendment rights. Specifically, he argued that as a public employee his contract negotiations are with the government, hence those fees were a form of political advocacy.

Based on long-standing precedent in ***Abood v. Detroit Board of Education***, all covered employees must pay a fee to account for the benefits of collective bargaining that unions offer. Those fees cover collective bargaining costs, such as contract negotiations, but not political advocacy.

However, Janus claimed such a fee requirement violated his right to free speech, because those fees went to change government policy on salary, benefits, and pensions. Accordingly, his fees were a direct form of speech.

On the other side, the union strongly advocated that Janus's agency fees simply prevented "free-riding" from employees who benefit from the union's negotiations. AFSCME argued that, because it was obligated by law to represent the interests of both union and non-union members, the fees were a way for employees to pay their fair share for contact negotiations for which they clearly benefited from.

In a 5-4 decision, the Supreme Court agreed with Mark Janus's position. Justice Alito wrote: "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned," Avoiding free riders, Alito wrote: "is not a compelling interest."

Today's ruling is a clear indication public sector unions must double their efforts to obtain full membership from their fair share bargaining unit members. Unions should clearly communicate about the many benefits of union membership, including the right to vote on a contract, lawyers for legal defense and the ability to vote in union elections. Other member-only benefits will vary from union to union.

Non-members are not entitled to many of the benefits unions provide to their members. For example, non-members do not have a right to vote on a contract (though they must be given some avenue to express their views), they do not have a right to have an attorney represent them in a discipline case or critical incident, they do not get to attend union meetings, and they do not have a right to other benefits a union may provide like access to the union hall, free or reduced cost classes for educational incentive credit or CPR, or special life and disability insurance.

Unions should also be aware of new state laws designed to protect their rights. The Legislature passed **Senate Bill 866** on June 18, 2018 and it is currently awaiting Governor Brown's signature. The bill requires payroll deductions for union dues and makes the union, not management, responsible for determining member consent to union membership. This prevents anti-union employers from using Janus as an excuse to drop members from the rolls, but it also requires unions to be actively engaged. **Senate Bill 285** prohibits employers from discouraging employees to join the union or trying to get members to drop their membership. Again, it require vigilance from union to enforce the law. **Assembly Bill 119** gives unions the right to access new employee orientations and get contact information for new hires. To get the benefit of this law, unions must request to bargain over new member access. Since many unions, particularly in public safety, already have established policies and practices for new member orientations, this law sets the floor, not the ceiling for access. A number of other bills mitigate the immediate impacts of Janus and unions should develop a plan to maximize use of these tools and member outreach to retain and grow membership.

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